

REMARKS

Claims 1-20 are pending in the application. Claims 1-20 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 7,158,573 to Hershbarger (the '573 patent). This rejection is respectfully traversed.

Hershbarger fails to provide a basis for the rejection of claims 1-20 under 35 U.S.C. 102(e), because it was filed after the filing date of the pending application. The pending application was filed on October 31, 2003, and Herschbarger was filed on May 28, 2004, over six months *after* the filing date of the pending application. Herschbarger does claim priority to a provisional application filed on May 29, 2003, (the '009 application) but the '009 application does not contain the same disclosure that was filed as the utility application that issued as the '573 patent. For example, the Examiner relies on Fig. 6 of Herschbarger to reject claim 15, but there is no figure in the '009 application that contains all of the elements of Fig. 6 of the '573 patent. The materials relied on by the Examiner in rejecting claim 15 include col. 10, line 57 to col. 11, line 25 of the '573 patent, which describe elements 618, 620, 622 and 624, but a careful review of the '009 application reveals that there are no such elements disclosed in the '009 application. The closest figure is shown on page 10 of the '009 application, but it is apparent that the figure on page 10 of the '009 application lacks any elements that are remotely related to elements 618, 620, 622 and 624 of the '573 patent. Indeed, there are no elements whatsoever in any of the figures of the '009 application that correspond to elements 618, 620, 622 and 624 of the '573 patent.

The Examiner also relies on the disclosure of Fig. 6 of the '573 patent in rejecting claims 16 and 1, and as claims 2-7 depend from claim 1, the '573 patent fails to anticipate those claims also.

In regards to claim 17, the Examiner relies on Fig. 9 of the '573 patent as anticipating the claimed invention, but again, there are no figures in the '009 application that correspond to Fig. 9 of the '573 patent. If anything, the situation with Fig. 9 is even worse than the situation with Fig. 6, as there is no figure in the '009 application that are even remotely related to Fig. 9 of the '573 patent. The Examiner also relies on Fig. 9 of the '573 patent in rejecting claim 20, and as claims 18 and 19 depend from claim 17, the Examiner has failed to demonstrate that the '573 patent anticipates those claims.

In regards to claim 8, the Examiner relies explicitly on Figs. 1, 3A and 3B, and also cites to disclosure that discusses at least Fig. 6. While the figure on page 20 of the '009 application is

similar to Fig. 1 of the '573 patent, there are some notable differences, and there does not appear to be any figure in the '009 application that is similar to Fig. 3B of the '573 patent. The Examiner also explicitly relies on Fig. 13 of the '573 patent which has no apparent corollary in the '009 application, and cites to sections of the '573 patent that discuss Fig. 6 in rejecting claims 8 and 10. The Examiner also explicitly relies on Fig. 14 of the '573 patent in rejecting claim 11, and again and not surprisingly, there is no corollary to that figure in the '009 application. The Examiner fails to explicitly address claims 2, 5-7, 9 and 12-14, stating only that "the limitations are shown above."

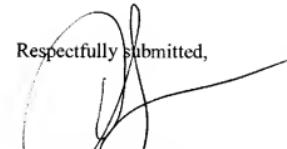
Thus, as demonstrated above, every single claim of the pending application is rejected based on materials in the '573 patent that are not present in the '009 application. The filing date of the '573 patent fails to provide a *prima facie* basis for the rejection of any claims under 35 U.S.C. 102(e), and much of the '573 patent fails to find support in the '009 application such that the claim to priority appears to be defective as to those materials. Accordingly, Applicants respectfully request that the rejection of claims 1-20 under 35 U.S.C. 102(e) as being anticipated by Herschbarger be withdrawn, and that claims 1-20 be allowed, having been subjected to diligent search and examination with the result that no valid basis for the rejection of the claims has been identified.

CONCLUSION

In view of the foregoing remarks and for various other reasons readily apparent, Applicants submit that all of the claims now present are allowable, and withdrawal of the rejection and a Notice of Allowance are courteously solicited.

If any impediment to the allowance of the claims remains after consideration of this amendment, a telephone interview with the Examiner is hereby requested by the undersigned at (214) 953-5990 so that such issues may be resolved as expeditiously as possible.

No additional fee is believed to be due. If any applicable fee or refund has been overlooked, the Commissioner is hereby authorized to charge any fee or credit any refund to the deposit account of Jackson Walker L.L.P. No. 10-0096.

Respectfully submitted,

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